

Per California Code of Regulations, title 2, section 548.5, the following information will be posted to CalHR's Career Executive Assignment Action Proposals website for 30 calendar days when departments propose new CEA concepts or major revisions to existing CEA concepts. Presence of the department-submitted CEA Action Proposal information on CalHR's website does not indicate CalHR support for the proposal.

A. GENERAL INFORMATION

1. Date

July 14, 2021

2. Department

Mental Health Services Oversight and Accountability Commission

3. Organizational Placement (Division/Branch/Office Name)

Executive

4. CEA Position Title

Chief Counsel

5. Summary of proposed position description and how it relates to the program's mission or purpose.
(2-3 sentences)

Under the administrative direction of the Executive Director, the Chief Counsel, CEA C consults with and advises the Executive Director of the Mental Health Services Oversight and Accountability Commission and other top administrators on legal issues as they affect overall programs and policies of Commission. The incumbent participates as a member of the top management team in the development and implementation of policy; reviews adopted and proposed legislation and advises the MHSOAC Executive Director on its effect on departmental programs; represents the MHSOAC in contacts with the Legislature, the Attorney General, and various governmental and private groups; reviews and interprets legally enforceable contracts and other documents; assists the Attorney General when he/she represents the Commission before administrative bodies or the courts; and other related work.

6. Reports to: (Class Title/Level)

Executive Director

7. Relationship with Department Director (*Select one*)

- ☒ Member of department's Executive Management Team, and has frequent contact with director on a wide range of department-wide issues.
- ☐ Not a member of department's Executive Management Team but has frequent contact with the Executive Management Team on policy issues.

(*Explain*):

8. Organizational Level (*Select one*)

- ☒ 1st ☐ 2nd ☐ 3rd ☐ 4th ☐ 5th (mega departments only - 17,001+ allocated positions)

B. SUMMARY OF REQUEST

9. What are the duties and responsibilities of the CEA position? Be specific and provide examples.

The Chief Counsel consults with, advises, and assists the Executive Director and staff of the Commission on administrative and legal problems arising in connection with the administration of a program. The Chief Counsel acts as a liaison officer on legal matters between the MHSOAC, the Attorney General's Office, other agencies, and the public. The Chief Counsel provides written and oral advice to, and confers with, State and other public officials and interested persons and organizations.

The Chief Counsel represents the Commission before legislative bodies, at legislative and administrative hearings, and in other meetings on administrative matters. The Chief Counsel reviews, analyzes, and interprets legislation affecting the administration of the MHSOAC. The Chief Counsel gives legal advice to Commission personnel charged with responsibility for conducting administrative hearings.

The Chief Counsel drafts proposed legislation, rules and regulations, orders, manuals, and legal forms. The Chief Counsel drafts the Commission's Rules of Procedure. This includes developing procedures for all business conducted by the Commission to ensure that the processes and procedures are conducted legally with respect to the laws and rules governing the Commission, public meetings, and other public events in which the Commission participates.

The Chief Counsel analyzes complex and difficult legal principles and precedents that apply to the implementation and oversight of the programs administered through the MHSA by the Department of Health Care Services (DHCS) and the county mental health programs. Duties include consulting with top management of DHCS, CMHDA, and state-level stakeholder organizations to gain perspective on their interpretations of law, reviewing case law and other precedents that may have bearing on any controversial issues that arise, and preparing and presenting legal opinions on these issues to the Commission.

The Chief Counsel provides legal interpretation regarding the Bagley-Keene Open Meeting Act as it relates to all activities of the Commission. This includes preparing written legal opinions regarding the requirements of the Bagley-Keene Act and apprising all commissioners of the necessity to adhere to this law. Duties include attending all Commission meetings to provide direct legal assistance and interpretation on procedures the Commission uses during its public meetings.

The Chief Counsel examines, reviews, and interprets contracts, leases, and other legal documents. Prepares requests to the Attorney General's Office for legal opinions and analyzes and interprets such opinions to Commission officials. The Chief Counsel assists the Attorney General and other public officials in the preparation of trial cases.

The Chief Counsel also prepares legal opinions, does legal research work, makes reports, and prepares correspondence on substantive issues before the Commission.

B. SUMMARY OF REQUEST (continued)

10. How critical is the program's mission or purpose to the department's mission as a whole? Include a description of the degree to which the program is critical to the department's mission.

- ☒ Program is directly related to department's primary mission and is critical to achieving the department's goals.
- ☐ Program is indirectly related to department's primary mission.
- ☐ Program plays a supporting role in achieving department's mission (i.e., budget, personnel, other admin functions).

Description: The mission of the Chief Counsel is to provide quality legal advice to Commission leadership and to ensure that the programs for which the Commission has oversight are in compliance with state and federal laws and regulations. This position provides legal interpretations, analysis, and advice to the Executive Director on legal issues as they affect the overall policies of the Commission. The Chief Counsel reviews legislation and guidelines for legal and system impact and assists in drafting legislation.

B. SUMMARY OF REQUEST (continued)

11. Describe what has changed that makes this request necessary. Explain how the change justifies the current request. Be specific and provide examples.

The most recent classification of the Chief Counsel of the Commission is an Administrative Advisor II, CEA. In January 2015 CalHR announced that "comma" CEA classifications would be abolished as part of their Class Consolidation Project. What this means for the Commission is that when the current incumbent vacates the position, we will not be allowed to fill the vacancy with the Administrative Adviser II, CEA classification. However, this will remain a "legacy" position for the Commission, and is the proper job classification for this function. The Commission has determined that the appropriate CEA level to convert the Administrative Adviser II, CEA classification is the CEA C. The following policies fall under the purview of the Administrative Adviser II, CEA and are essential to the Commission:

Legislative Policy – The Commission was created in statute under the Mental Health Services Act of 2005 following the passage of Proposition 63. Since then, the Commission's programs have been revised and new programs have been expanded several times, through the legislative process. In providing advice and counsel in this arena, the CEA helps shape the direction of funding for the delivery of mental health services at the community level. This legislative process must account for issues that are unique to the mental health field and have a direct impact on the quality of life for individuals in crisis. These issues are often controversial (e.g. treatment of substance abuse and shelter for the unhoused population). These are also the type of issues that directly concern the general public and are followed by the media. The CEA must anticipate legislative or regulatory revisions as needed to implement new directions in Commission policy which are often based on stakeholder input. The CEA is uniquely qualified to interpret legislative intent to resolve ambiguities in the existing scheme, and to provide legal analysis in support of needed revisions. For example, a legislative revision to clarify the Commission's role as grant administrator would greatly enhance its process for receiving PHI data from a county DMH. Failure to clarify will result in continued delays, while the Commission negotiates "business associate agreements" for HIPAA confidentiality of this data. Failure to receive this data would hamper the Commission's ability to report on program outcomes and could result in the reduction of Triage Program funding. As another example, the Mental Health Student Services Act does not specify whether the Commission's partnerships with school districts may extend to services for children in pre-school. This also requires a legislative revision for the Commission to implement its policy in favor of early intervention for children in crisis.

Personnel/Employment Policy – Personnel policy is inherently sensitive since it affects basic worker rights: providing a safe and harassment-free workplace; protecting against discrimination in hiring and promotion; resolving conflicts between management and staff; ensuring progressive discipline when behavioral incidents arise, and more. The CEA must also understand the process of collective bargaining and how it protects terms and conditions of employment for represented workers. The CEA represents management to "meet and confer" with union representatives over terms/conditions, and in CalHR or SPB proceedings for grievances/appeals. These are all complex and sensitive issues that directly affect employee job satisfaction. For example, CalHR is developing new "telecommute standards" that will require each appointing authority to implement a policy consistent with its mission and scope. This is an especially complex and sensitive subject, given that the majority of staff have been telecommuting for over a year in response to the pandemic. Management will rely on the CEA's expertise in personnel and employment law to determine which staff should report to work onsite and to what extent, based on job duties, reporting relationships and other aspects of organizational structure.

Contract/Procurements Policy – The Commission supports the community-level delivery of mental health services through its administration of statewide grant programs. This FY 2021-22 the Commission will also be tasked with administering federal grant funds for the first time, with \$100 million added to its Mental Health Services Fund appropriation, making to total MHSSA appropriation \$103,830,000 for Fiscal Year 2021/22. These federal funds are dedicated to COVID 19 relief in the form of community response to lingering effects of the pandemic in the field of mental health. The CEA is responsible for developing selection criteria, drafting and negotiating all grant agreements, and will now be tasked with developing a new range of documents and procedures that conform to federal grant standards. By its competitive nature, the grant process is sensitive for Commission stakeholders. The CEA oversees all related transactions such as ongoing negotiations with county Departments of Mental Health (DMH) to ensure confidentiality of Personal Health Information (PHI) in data uploads, which requires proficiency in federal HIPAA and state privacy standards. In addition, the CEA oversees all procurement contracts including complex "agile development" and software maintenance IT services. Legal requirements for the Commission's state and federal grant programs differ widely from state procurement contracting. For both contract types, the CEA will draft language specific to program goals and develop policies that facilitate the process. The CEA will also oversee contract monitoring for timely performance and quality assurance. The CEA must also oversee amendments throughout the term of contract.

C. ROLE IN POLICY INFLUENCE

12. Provide 3-5 specific examples of policy areas over which the CEA position will be the principle policy maker. Each example should cite a policy that would have an identifiable impact. Include a description of the statewide impact of the assigned program.

The Chief Counsel will provide legal insight on all personnel/employment matters, execution and negotiation of contract/procurements and legislative changes. Additionally, the Chief Counsel will oversee the legal interpretations of state and federal statutes and regulations related to the Commissions programs.

Legislative Policy - Oversee the development of policy proposals for legislative action as it relates to the Commission. Serve as the primary legal policy advisor and provide legal advice to the Executive Director, executive staff, and other staff on legal issues.

Personnel/Employment Policy - Reviews Departmental personnel policies to ensure compliance and consistency with the Commission's organizational goals and objectives while meeting federal and state laws, and the rules of the CalHR, State Personnel Board (SPB), and other state business partners.

Contract/Procurements Policy - Oversee the procurement and execution of \$70.1 million in contracts annually and review for legal and policy compliance and consistency. Ensure the Commission's contract/procurement policies are in compliance and consistent with the Department of General Services' contracting rules and regulations.

Regulations – Adopt regulations consistent with the Administrative Procedures Act (APA) as needed to implement a variety of statutory programs consistent with related state or federal law. This requires preparation of draft text and noticing an opportunity to comment at stakeholder meetings and public hearings; the draft is then finalized and adopted in conformance with comments “accepted” by the Commission. This also requires drafting and revising an Initial Statement of Reasons to establish the necessity for each regulatory requirement, preparing a Rulemaking File, and otherwise meeting Office of Administrative Law review and approval standards.

C. ROLE IN POLICY INFLUENCE (continued)

13. What is the CEA position's scope and nature of decision-making authority?

The scope and decision-making authority of the Chief Counsel is broad and sensitive which may impact Commission stakeholders, County mental health agencies, and the public. The Chief Counsel will also work closely with the Executive Director, senior leaders, and outside agencies in developing policies and procedures resulting in impacts to the statewide mental health system.

This position independently anticipates and solves major challenges and addresses strategic policy matters associated with changes in statute and regulations that have an impact on the mental health system statewide. Additionally, this position represents the Commission while partnering with the Attorney General's Office on litigation strategy on the most complex legal issues facing the Commission. The Chief Counsel is the highest level of review for matters within all legal components.

14. Will the CEA position be developing and implementing new policy, or interpreting and implementing existing policy? How?

The Chief Counsel is responsible for developing and implementing new policy, as well as interpreting and implementing existing policy. For example, the Chief Counsel will interpret personnel policies to ensure compliance with state and federal laws, the rules of CalHR, SPB, and other state business partners while developing new Commission policies. The Chief Counsel also will oversee the legal interpretations of state and federal statutes and regulations related to the California mental health system and implement policy changes as appropriate.